

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

GARY BRYAN BRACKIN,)	
individually and in his capacity as Surviving)	
Spouse of PAMELA W. BRACKIN,)	
Deceased,)	
)	
Plaintiff,)	Case No. 2:17-cv-2101
)	
v.)	
)	
MEDTRONIC, INC., et. al,)	
)	
Defendants.)	
_____)	

**UNOPPOSED MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF
DEFENDANTS MEDTRONIC, INC.’S AND MEDTRONIC MINIMED, INC.’S
MOTION TO EXCLUDE OPINIONS AND TESTIMONY OF
WILLIAM J. VIGILANTE, JR., PH.D, CPE**

Defendants Medtronic, Inc. and Medtronic MiniMed, Inc. (collectively, “Medtronic Defendants”), by and through their attorneys and pursuant to Local Rule 7.2 (c) file this motion for leave to file a reply brief addressing Plaintiff’s Response to Medtronic Defendants’ Motion and Memorandum of Law in support of the Motion to Exclude Opinions and Testimony of William Vigilante, Jr., Ph.D., CPE, (Response at Doc. 134, Motion at Doc. 124). Plaintiff takes no position on this Motion.

Under Local Rule 7.2 (c), a party may file a reply brief “upon court order granting a motion for leave to reply.” Medtronic Defendants respectfully request permission to file a short reply brief to clarify and respond to Plaintiff’s lengthy memoranda.

Medtronic Defendants request an opportunity to reply to Plaintiff’s Response on the basis that further briefing is necessary to aid the Court in evaluating the parties’ respective legal positions as it pertains to the admissibility of William Vigilante’s expert testimony, clarifying the

record, and expediting the disposition of this issue in anticipation of trial. Furthermore, due to Dr. Vigilante's unavailability, the Medtronic Defendants were unable to take his deposition until September 14, 2018 – the day the *Daubert* motions were due under the Court's Scheduling Order. Thus, the Medtronic Defendants were unable to cite his testimony in this case in support of their Motion, due to the lack of an available deposition transcript. Although the Medtronic Defendants cited testimony from his prior depositions, they need the opportunity to include additional deposition testimony from this case to supplement the record supporting the exclusion of his testimony. Plaintiff has cited testimony from this transcript in support of his Response and the Medtronic Defendants must address these additional citations of testimony in support of their Motion. Finally, Plaintiff cites additional case law purporting to support his Response that the Medtronic Defendants must also address. For these reasons, the Medtronic Defendants respectfully request leave to reply.

Dated: October 5, 2018

GREENBERG TRAURIG, LLP

/s/ R. Clifton Merrell

Lori G. Cohen
Georgia Bar No. 174455
(Admitted *Pro Hac Vice*)
R. Clifton Merrell
Georgia Bar No. 593903
(Admitted *Pro Hac Vice*)
Jessica Cabral Odom
Georgia Bar No. 140935
(Admitted *Pro Hac Vice*)
GREENBERG TRAURIG, LLP
Terminus 200
3333 Piedmont Road, N.E.
Suite 2500
Atlanta, GA 30305
Telephone: (678) 553-2100
Facsimile: (678) 553-2212
cohenl@gtlaw.com
merrellc@gtlaw.com

odomj@gtlaw.com

Quinn N. Carlson (TN #25603)
J. Carter Thompson (TN #35494)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
165 Madison Avenue, Suite 2000
Memphis, Tennessee 38103
Telephone: (901) 526-2000
Facsimile: (901) 577-2303
qcarlson@bakerdonelson.com
cthompson@bakerdonelson.com

*Counsel for Defendants Medtronic, Inc. and
Medtronic MiniMed, Inc.*

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the within and foregoing
**UNOPPOSED MOTION FOR LEAVE TO FILE REPLY BRIEF IN SUPPORT OF
DEFENDANTS MEDTRONIC, INC.'S AND MEDTRONIC MINIMED, INC.'S MOTION
TO EXCLUDE OPINIONS AND TESTIMONY OF WILLIAM J. VIGILANTE, JR., PH.D,**
CPE via electronic mail to all counsel of record as follows:

Gary K. Smith
Gary K. Smith Law Firm, PLLC
1770 Kirby Parkway, Suite 427
Memphis, Tennessee 38138
gsmith@garyksmithlaw.com

Kevin Haverty
Williams Cedar LLC
1515 Market Street, Suite 1300
Philadelphia, PA 19102
khaverty@williamscedar.com

Marlene J. Goldenberg
GoldenbergLaw, PLLC
800 LaSalle Avenue, Suite 2150
Minneapolis, MN 55402
mjgoldenberg@goldenberglaw.com

This 5th day of October, 2018.

By: s/ R. Clifton Merrell